In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-568

VILMA ARRIAZA, CHARLOTTE HIGGINS, KATHARYNE ANNE MALLOY and VIRGINIA WARD,
Petitioners

vs.

CROCKER NATIONAL BANK, a National Banking Association,
Respondent

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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I. THE ORDER AND JUDGMENT BELOW

The Petitioners Vilma Arriaza, Charlotte Higgins, Katharyne Anne Malloy and Virginia Ward, respectfully pray that a writ of certiorari issue to review the ruling of the order of the United States Court of Appeals for the Ninth Circuit dismissing as moot and denying class certification in the appeals of Vilma Arriaza and Charlotte Higgins.

A copy of the order appealed from and of the denial of Appellant's petition for rehearing and class certification are attached as Appendix A and Appendix B.

II. JURISDICTION

A. The order of dismissal and denial of class certification and judgment entered thereon were entered June 8, 1978. The order denying rehearing was entered July 5, 1978. (Appendices A & B)

B. Jurisdiction of this Petition is based on 28 U.S.C. § 1254(1). (Appendix C)

III. QUESTIONS PRESENTED FOR REVIEW

A. Is an appeal by putative class representatives rendered moot by their acceptance of the terms of a non-comprehensive District Court settlement of portions of their original action?

B. If not, can members of the class they purport to represent who have claims surviving the non-comprehensive settlement intervene in the appeal as substitute class representatives?

IV. STATUTES AND RULES INVOLVED

A. The original action in which appeal was taken was grounded upon 42 U.S.C. §§ 2000e-2(a), *et seq.* (Civil Rights Act of 1964, as amended). They were dismissed from this case under 42 U.S.C. § 2000e-5(f). See Appendix D.

B. In that action, *and in their appeal,* petitioners Arriaza and Higgins sought status as class representatives pursuant to Rule 23(b)(2) and (b)(3), Federal Rules of Civil Procedure. See Appendix E.

V. STATEMENT OF THE CASE

Petitioners Arriaza, Higgins, Malloy and Ward were four of ten (10) original named plaintiffs who sought relief from a pattern and practice of sex discrimination in employment at Crocker National Bank on behalf of themselves and others similarly situated in the action *Levine v. Crocker National Bank,* C-75-2333. This original action was based upon Title VII of the Civil Rights Act of 1964; 42 U.S.C. §§ 2000e-2(a) *et seq.* (Appendix D).

Upon motion, they and five (5) others were dismissed from that action on the ground that:

(1) Arriaza had been unable, because of EEOC delays, to secure her right to sue letter at all; and

(2) Higgins (and the other plaintiffs dismissed) had failed to wait 180 days following date the EEOC took jurisdiction over her charge before obtaining a right to sue letter.

Co-plaintiff Doris Levine remained as the sole plaintiff in the original action because she had waited 180 days from the date the EEOC took jurisdiction of her charge before timely securing her right to sue letter.

All of the dismissed plaintiffs except Petitioners Arriaza and Higgins filed a second action, (*Balzarini v. Crocker National Bank,* C-76-1971) on new right-to-sue letters issued by the EEOC. A motion to dismiss that action, on the ground the second right to sue letters were improperly issued has not been ruled upon, for that action has been stayed since shortly after it was filed. The *Balzarini* plaintiffs (including petitioners Malloy and Ward) were denied reentry by intervention in the original *Levine* action.

On December 29, 1977, the original action was partially settled. A class was finally certified as to claims of discrimination in *pay and promotion* only. The class was decertified (a class had been certified by stipulation April 1, 1977) in the original *Levine* action as to all other claims—e.g. termination, hiring, job classification—and class notice with opt-out rights was given.

Petitioners Arriaza and Higgins did not opt out of the settlement and neither of them have claims which survive the settlement.

Petitioner Malloy and about one hundred (100) others opted out of the settlement. Their rights depend on the ultimate disposition of the appeal in this action.

Petitioner Ward's termination claim remains outside the settlement (termination claims were excluded). Her rights and those of other terminees depend upon the ultimate disposition of the appeal in this action.

VI. REASONS WHY THE PETITION SHOULD BE GRANTED

1. The holding appealed from is contrary to every one of this Court's decisions of which plaintiffs are aware concerning Title VII jurisdictional prerequisites to suit.

The trial court held that despite the Equal Employment Opportunity Commission's inability to reach the charges filed by petitioners within 180 days, the statute nevertheless requires that much time to elapse before the Commission could issue valid right-to-sue letters. The sole pur-

pose and effect of this ruling is to defeat Congress' purpose to protect "the aggrieved persons' option to seek a prompt remedy in the best manner available." *Report of the House Committee on Education and Labor,* H.R. Report No. 92-238, 92 Cong., 1st Session (1971), pp. 12-13.

The ruling is contrary to every Title VII jurisdictional prerequisite decision this Court has made of which plaintiffs are aware: e.g. *Love v. Pullman,* 404 U.S. 522, 92 S.Ct. 616, (1972) (permitting EEOC charge filing to precede state agency filing); *Occidental Life Ins. Co. of Calif. v. EEOC,* 432 U.S. 355, 97 S.Ct. 2447, 53 L.Ed.2d 402 (1977) (holding EEOC need not bring its action within 180 days); *McDonnell Douglas v. Green,* 411 U.S. 792, 93 S.Ct. 1817, (1973) (holding that the absence of an EEOC determination of a particular issue did not prevent a plaintiff from litigating that issue in the district court). The timely filing of a charge and the receipt of and acting upon a Commission's statutory notice of right to sue are, plaintiffs believe, the only jurisdictional prerequisites. *Alexander v. Gardner-Denver,* 415 U.S. 36, 47, 94 S.Ct. 1011 (1974).

2. This issue by its nature evades appellate review.

No less than six cases testing this technical defense were decided in the Northern District of California in 1975 and 1976 before the decision in the instant case. Four held there was no 180 day waiting requirement; two held there was.* The instant case was the third that held there was.

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*Cases finding a 180-day wait is not jurisdictional: *Lewis v. FMC Corporation,* .... F.Supp. .... (N.D. Calif. 1975) 11 FEP Cases 31 [holding that a suit brought before 180 days had lapsed between plaintiff's filing of the EEOC charge and filing of the

The effect of such a challenge upon the litigation and litigants is two-fold: first, plaintiffs must file a new suit on a new right-to-sue letter if they can get one, only to be met by a motion to dismiss (such as is presently under submission against petitioners here) on the ground that the EEOC had no power to issue a second right-to-sue letter, or they may settle.

Second, and perhaps more important, aggrieved persons needing court resolution of their discrimination claims will wait the 180 days before requesting a right-to-sue letter. Litigants will not knowingly invite a jurisdictional attack on their complaint, for fear of becoming embroiled in the tortuous appellate process, or possibly losing their rights altogether. Thus, the issue flares up and, if not resolved, becomes *de facto* law. Congress' purpose is thwarted by default.

3. The Court of Appeals misapplied the well-established doctrine of mootness to this class action.

This Court has already held that the mootness of class representatives' claims does not moot the issue for purpose of review, at least where the action was certified as class action at the trial court level. *Sosna v. State of Iowa,* 419

lawsuit would be allowed]; *Gary vs. Industrial Indemnity Co.,* .... F.Supp. .... (N.D. Calif. 1973) 7 FEP Cases 1973 [in an opinion by Judge Zirpoli, holding that there was no jurisdictional bar to actions where the Commission issues right to sue letters prior to the expiration of the 180 day period]; *Westerlund vs. Fireman's Fund Insurance Company,* .... F.Supp. .... (N.D. Calif. 1975) 11 FEP Cases 744; *Zubero vs. Memorex Inc.,* .... F.Supp. .... (N.D. Calif. 1976) 12 FEP Cases 604.

Cases holding a 180-day wait *is* jurisdictional: *Budreck vs. Crocker National Bank,* .... F.Supp. .... (N.D. Calif. 1976) 12 FEP Cases 594; *Jones vs. Intermountain Express,* .... F.Supp. .... (N.D. Calif. 1975) 10 FEP Cases 914.

U.S. 313, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Moreover, it has held that a live certification is not necessary in order for a member of putative class to take over the class representation to secure appellate review. See *United Airlines, Inc. v. McDonald,* 432 U.S. 385, 97 S.Ct. 2464, 53 L.Ed.2d 423 (1977) (holding that a class member could appeal a denial of class certification rendered years before, where the class representative failed to do so.)

An action alleged as a class action *is* a class action until it has been determined otherwise. *American Pipe and Construction Co. v. Utah* (1974) 414 U.S. 538, 38 L.Ed.2d 713, 94 S.Ct. 756 (so held for purposes of tolling the statute of limitations on class claims). This action was so alleged. Even the appeals of petitioners Arriaza and Higgins were filed "on behalf of others similarly situated." Courts of Appeal have the power to certify an action as a class action, *Senter v. General Motors Corp,* 532 F.2d 51, (6th Cir. 1976) but the Court of Appeals did not recognize that it had the power in this case. In this respect it erred.

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Dated, September 28, 1978.

Respectfully submitted,
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ROBERT A. SELIGSON,
Attorneys for Petitioners.

(Appendices Follow)

Appendices A, B, C, D and E

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

VILMA ARRIAZA and CHARLOTTE HIGGINS, *Plaintiffs-Appellants,* DORIS LEVINE, et al., *Plaintiffs,* v. CROCKER NATIONAL BANK, a National Banking Association, *Defendant-Appellee.*	No. 76-1712 No. 76-1861 ORDER

[June 8, 1978]

Appeal from the United States District Court
for the Northern District of California

Before: BROWNING and CHOY, Circuit Judges, and
*DAVID W. WILLIAMS, District Judge

The appeals must be dismissed as moot. It is conceded that because of the settlement approved by the court below, appellants have no personal interest in the outcome of these appeals. If their appeal succeeded and the judgments of dismissal were reversed, appellants would have nothing to litigate in the court below. Nor can the appeal continue with appellants as class representatives. Appellants did not appeal as representatives of a class. They have not been certified as class representatives. No class had been

*Honorable David W. Williams, United States District Judge, Central District of California, sitting by designation.

certified when the appeal was taken. The class certified by the district court subsequent to the appeal consists entirely of persons who accepted the settlement which disposed of appellants' claims and those of all other members of the class to which appellants belong. Appellants could represent no other class, for they are members of none. *See Baxter v. Palmigiano,* 425 U.S. 308, 310 n.1 (1976); *Franks v. Bowman Transportation Co.,* 424 U.S. 747, 753 (1976); *Sosna v. Iowa,* 419 U.S. 393, 402, 403 (1975).

Appellants' motion that certain other persons who did not participate in the settlement be substituted as appellants must be denied. The persons sought to be substituted cannot be treated as appellants in their own right; they failed to appeal within the time fixed by law. *Cook & Sons Equipment, Inc. v. Killen,* 277 F.2d 607, 609 (9th Cir. 1960). They cannot be treated as class representatives; the class to which they belong has not been certified, and they have not been designated to represent any class. *Baxter v. Palmigiano, supra.*

The motion to substitute is denied. The appeals are dismissed as moot.

Appellants' motion for attorneys' fees is denied and each party is instructed to bear its own costs.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

VILMA ARRIAZA and CHARLOTTE HIGGINS, *Plaintiffs-Appellants,*	
DORIS LEVINE, et al., *Plaintiffs,*	No. 76-1712
v.	No. 76-1861
CROCKER NATIONAL BANK, a National Banking Association, *Defendant-Appellee.*	ORDER

[July 5, 1978]

Before: BROWNING and CHOY, Circuit Judges, and *DAVID W. WILLIAMS, District Judge

Appellants' petition for rehearing and certification of class is denied.

*Honorable David W. Williams, United States District Judge, Central District of California, sitting by designation.

APPENDIX C

28 U.S.C. § 1254(1)

1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

APPENDIX D

42 U.S.C. § 2000e-2

2000e-2. Unlawful employment practices—Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment oportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C § 2000e-5

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney

General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary

restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of action brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief

judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

APPENDIX E

FEDERAL RULES OF CIVIL PROCEDURE

Rule 23. Class Actions.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent

and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Respondent's Brief in Opposition

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Respondent's Brief in Opposition

The respondent Crocker National Bank respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in this case. That opinion is not reported.

QUESTIONS PRESENTED

A. Is an appeal by two dismissed plaintiffs rendered moot when their original class action was continued by a co-plaintiff to a full settlement, when they have accepted the terms of that settlement, and when they have certified to the Court of Appeals that they no longer have an interest in the outcome of the appeal?

B. If not, can other dismissed plaintiffs who did not file a timely appeal of their dismissal intervene in an appeal by others and seek class representative status for claims not covered by the full settlement of their original action?

STATEMENT OF THE CASE

On November 5, 1975, ten plaintiffs, including the four petitioners, filed a complaint[1] alleging that Crocker National Bank had discriminated against them and others similarly situated on the basis of sex. On the motion of Crocker National Bank, nine of the ten plaintiffs were dismissed from the action for having failed to meet the jurisdictional prerequisites to instituting suit. Two of those nine dismissed plaintiffs, Arriaza and Higgins, appealed their dismissal to the United States Court of Appeals for the Ninth Circuit. The remaining seven, including Malloy and Ward, made no such appeal.

While the appeals of Arriaza and Higgins were pending, the litigation continued before the district court. On April 13, 1977, through stipulation of the parties, the court certified a class of all females employed in the California

1. *Levine, et al. v. Crocker National Bank*, C-75-2333-CBR, in the United States District Court for the Northern District of California (Renfrew, J.).

facilities of Crocker National Bank. Then, still prior to resolution of the appeals of Arriaza and Higgins, the action was settled and the settlement given final approval by the district court, from which no appeal was taken. The settlement, contrary to the assertions in the Petition, was a full and complete settlement covering "all claims which have been or could have been advanced on behalf of the classes or any members thereof . . . ." (Consent Decree in Full Settlement of Action, finally approved by the district court on December 29, 1977, at 4). Termination and refusal to hire claims were excluded from the class definition. All class members were sent notices regarding the settlement and were advised of their opportunity to exclude themselves from the class. Neither Arriaza nor Higgins exercised that option and thus they became bound by the settlement.

On the basis of the Consent Decree in Full Settlement of Action, the Ninth Circuit requested that the parties to the appeal brief the issue of whether the Arriaza and Higgins appeals were rendered moot by the settlement. In their papers to the Court of Appeals, Arriaza and Higgins acknowledged that neither of them had an interest in the outcome of their appeal. Consequently, the appeal was dismissed as moot. However, they suggested to the Court of Appeals that Malloy and Ward, also persons who had been dismissed as plaintiffs from the *Levine* action over a year and one-half before, but who had not appealed the dismissal of their actions, could be substituted for appellants. On June 8, 1978, the Ninth Circuit dismissed the appeals of Arriaza and Higgins as moot, and further concluded that Ward and Malloy could not be substituted for appellants Higgins and Arriaza. It therefore was unnecessary for the Court to address the merits of the appeal.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals Properly Concluded That the Appeals of Arriaza and Higgins Are Moot

When Arriaza and Higgins appealed their dismissal as plaintiffs, the action which they had instituted was continued by a co-plaintiff. That action was ultimately settled and notices were sent to all class members advising them of the terms of the settlement and of their opportunity to exclude themselves from the class if they so desired. As they state in their Petition, "Arriaza and Higgins did not opt out of the settlement and neither of them have claims which survive the settlement." (Petition at 4) Therefore, it must necessarily follow that because they accepted the full settlement of the action which they instituted, and because they no longer have an interest in the outcome of their appeals, their appeals are moot.

Any attempt by Arriaza and Higgins to continue to pursue this appeal, when their stake in its outcome has abated, constitutes nothing more than an invitation to this Court to issue an advisory opinion. It has been well-settled since at least 1793 that the jurisdiction of the federal courts is limited to cases and controversies, and that advisory opinions are without that jurisdiction. U.S. Const. Art. III; *Flast v. Cohen*, 392 U.S. 83, 94-97 (1968); *see* "Correspondence of the Justices," *in* Hart & Wechsler, *The Federal Courts and the Federal System 64-66 (1973 ed.)*.

II. There Is No Authority for Petitioners' Argument That the Appeal May Continue Notwithstanding the Mootness of the Claims of Arriaza and Higgins

In a futile attempt to cure the mootness of their appeal, petitioners Arriaza and Higgins brought Ward and Malloy forward when the Court of Appeals asked whether the

appeal should be dismissed as moot. Ward and Malloy failed to file a notice of appeal when their individual claims were dismissed. They may not appeal a judgment which has become final.

In addition, petitioners apparently argue that because Ward and Malloy could be potential class representatives for the limited claims not covered by the class definition in the settled case, they should be permitted by this Court to maintain some new class action. In considering this argument, one must keep in mind the question raised by the initial appeal: whether the District Court's dismissal of the complaints of Arriaza and Higgins was proper. No other question related to other persons or to a class was before the Ninth Circuit, nor would such a question be properly before this Court.

Thus, Ward and Malloy cannot appeal as to the dismissal of their complaints because that judgment became final without appeal. Neither do these two petitioners have standing to pursue the appeal of Arriaza and Higgins, whose claims are now admittedly moot. Finally, no class questions were the subject of any appeal to the Ninth Circuit, and could not have been, since the only class action which existed has proceeded to final judgment well after the appeals were taken. There is no class action or issue currently in existence which could be the subject of any appeal in this matter.[2]

Petitioners evidently would have this Court believe that unless the appeals of Arriaza and Higgins are allowed to continue notwithstanding their mootness, some unidentified group of persons would be harmed. This argument

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2. As a result the authority cited by petitioners at pages 6 and 7 of the Petition is inapposite for it relates to class matters which were not fully and completely settled.

is without merit. As to claims covered by the class settlement, the class is bound. As to other claims, no one is bound by the settlement.

III. There Is No Conflict Between the Circuits or with the Opinions of This Court, Nor Is Any Significant Question Presented for Review.

Petitioners, in an attempt to have this Court address an issue which the Ninth Circuit concluded it need not consider, have set forth arguments regarding whether 180 suit-free days must pass from the date that the Equal Employment Opportunity Commission assumes jurisdiction of an employment discrimination charge before suit may be instituted.[3] Not only is this question inappropriate for presentation to the Court because it was not decided by the Court below, it is not arguably encompassed by the questions appellants have requested this Court to review.[4]

Once beyond the inappropriate argument regarding the 180-day issue, the Court is left with the two questions set forth at the beginning of this Response. With respect to those two issues, and in light of United States Supreme Court Rule 19, petitioners have patently failed to establish that either the Ninth Circuit's decision of mootness or its denial of the request for substitution of appellants is in conflict with either the decisions of the other circuits or of this Court. Indeed, no such conflict exists.

Furthermore, the mootness and substitution questions do not present any significant legal issues for review.

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3. *But see Occidental Life Ins. Co. of California v. EEOC*, 432 U.S. 355 (1977), wherein this Court stated that a "private right of action does not arise until 180 days after a charge has been filed." *Id.* at 361.

4. *See* United States Supreme Court Rule 23(c), which concludes, "Only the questions set forth in the petition or fairly comprised therein will be considered by the court."

CONCLUSION

For the foregoing reasons, respondent Crocker National Bank respectfully requests this Court to deny Appellants' Petition for Writ of Certiorari to the Court of Appeals for the Ninth Circuit.

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